IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1261 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

EXECUTIVE ENGINEER

Versus

ZUBEDABAI IBRAHIM

Appearance:

1. First Appeal No. 1261 of 1984

MR VT ACHARYA for Appellant No. 1

MRS MC THAKKER for Respondent No. 1-7

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 15/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

#. The Executive Engineer, Jamnagar Division, Gujarat

Electricity Board has filed this appeal under Section 96 of the Civil Procedure Code against the judgement and decree dated 2.4.1984 passed by IInd Joint Civil Judge (SD) Jamnagar in special Civil Suit No. 57 of 1980. The learned Judge has partly decreed the suit of the plaintiff with proportionate cost. As per decree, the plaintiff was entitled to recover a sum of Rs.1,32,800/(Rs. One Lac thirty two thousand eight hundred only) from the defendant G.E.B. by way of compensation with running interest at the rate of 6% p.a. from the date of suit till realisation.

#. The facts giving rise to this appeal are as under:-

2.1 Smt. Subedabai Ibrahim Plaintiff no. 1 is the widow of deceased Ibrahim Haji and plaintiff Nos. 2 to 7 are the legal heirs of deceased Ibrahim Haji. The defendant is the principal officer of the Gujarat Electricity Board, (hereinafter referred as "GEB") Jamnagar and GEB is carrying on the business of supplying electricity in the State and for that purpose, they install electric poles and on this poles, they install electric live wires.

2.2 The plaintiffs filed a suit against defendant for damages. It was contended in the plaint that the defendant has given electric connection to the agricultural lands of Khambhalia town and for that purpose, they have installed electric poles at different places. The agricultural lands vadi of deceased has been situated in the sim of Khambhalia. The deceased has put up wire fencing surrounding vadi for protecting his crops of his vadi. That the defendants have installed electric pole just adjacent to the wire fencing of the vadi of deceased Ibrahim Haji Kasam and from that, the pole the electric live wire has been fixed for supplying to agricultural lands consumers. The electric pole and wires are still just adjacent to the vadi of deceased Ibrahim Haji Kasam. That the electric supply of 220 to 440 Km. is being supplied through the live wire. The live wire is dangerous to the human life, therefore, it is the duty of the defendant to take proper care of that live wire so that it may not fall down or do not cause any injury to any person or the property of anybody. The live wire were disconnected from the electric pole which was installed just adjacent to the wire fencing of deceased's vadi on 31.8.1978. The disconnected wire was hanging and it came into contact of the wire fencing of deceased and therefore, electrical supply was there in the wire of the plaintiff's vadi. The deceased Ibrahim Haji Kasam carried on his agricultural work in his vadi

and he was carrying on repairing work of his hedge and wire fencing. At that time, he came into contact of wire fencing in which the electric supply was there which could not be seen by the deceased and due to this contact with live wire, deceased Ibrahim met with an unfortunate instant death on the spot. It was the duty of the defendant to see that no such incident may happen and for that it has to put guard below live wire but, no such arrangement was made by the defendants. Due to this omission on the part of the defendant, deceased came in contact with the live wire and he was electrocuted and met with an unfortunate instant death on 31.8.1978 at about 3.30 p.m. The deceased died due to the negligence of the defendant. The age of the deceased was 37 years at the time of his death and he might have survived for 70 years and could have maintained his family for many years. That the deceased had agricultural lands as well as one 'galla' in vegetable market at Khambhalia. Thus he was earning Rs.15,000=00 to 20,000=00 per year out of the said agricultural lands and galla and therefore, plaintiffs are entitled to claim Rs.3,00,000=00 as the compensation, but they have limited their claim up to the extent of Rs.1,50,000=00 towards the compensation.

2.3 The defendant GEB has resisted the suit by filing its written statement Ex. 11. It was contended by the defendant that the suit of the plaintiffs is neither true nor legal or bonafide. It was contended that it is an admitted fact that the defendant has installed electric poles of 220 to 440 k.w. and defendant has got his office at Khambhalia and there it has installed electrical poles in the sim of village Khambhalia. It was contended in the reply that the defendant is taking care of the electric poles of its office. It was denied that deceased died due to the electrocution in his vadi on dated 31.8.1978. It was also denied that the deceased died due to negligence of defendant and therefore, the defendant was not liable to pay the amount of compensation as prayed. It was also contended that deceased was not died due to electrocution and therefore, no postmortem was made and moreover, the plaintiffs have not given any notice regarding death of deceased to the defendant and they have not declared death any where, therefore, plaintiffs are not entitled to get any amount of compensation from the defendant, thus, suit of the plaintiff being false, frivolous and it is liable to be dismissed.

#. On behalf of the plaintiffs, brother of deceased Ibrahim, Gani Haji Kasam and neighbour of deceased Zakar Sakur were examined at Ex. 37 and Ex. 53 respectively.

With regard to documentary evidence at Ex. 29, the plaintiffs have produced all police papers in connection with death of deceased and other documents in support of the case. On behalf of defendant, one Bharatkumar Bhailalbhai Shah - Doctor and Deputy Engineer of GEB Shri Dilkhus Karamshibhai Bhadiniya were examined at Ex. 62 and 69 respectively.

#. The learned Judge by his impugned judgement has held that the plaintiffs have proved that the plaintiffs are heirs and legal representatives of deceased Ibrahimbhai. The plaintiffs have also proved that the deceased owned the agricultural land in Khambhalia sim and shop in vegetable market in Khambhalia. It was also proved that the deceased was earning Rs.10,000/- per annum. The plaintiffs have proved that the deceased was died due to electrocution due to negligent act on the part of the GEB and the court has jurisdiction to entertain the suit and the learned Judge has awarded Rs.1,32,800/- by way of compensation to the plaintiffs from the defendant GEB with running interest at the rate of 6% p.a.

#. Mr. V.T. Aachayra, learned advocate for the appellant has raised various contentions. It was contended that the learned Judge has erred in law in holding that deceased died because of electric shock and he was electrocuted. It was further submitted that no panchnama made nor postmortem was made of the deceased in order to prove that the deceased was died because of electric shock. It was submitted that the incident happened on 31.8.1978 and suit is filed on 30.5.1980, therefore, suit is barred by period of limitation. It is also submitted that the learned Judge has not framed the issues in the suit.

#. We have gone through the evidence and record and particularly the inquest panchnama prepared therein and also all the police papers, which were produced at Ex. 29. These documents clearly prove that live wire fell down on the wire fencing of deceased's vadi, where the deceased was working and at that time, he came in contact with the wire fencing and got electric shock and he was electrocuted and died on the spot. The Medical Officer, who has examined the deceased has also opined that the deceased died due to electric shock. The neighbour of the plaintiff has also stated that the deceased died due to electric shock. It may be noted that the defendant witness Bharatbhai, who is a Doctor, has also admitted that deceased died due to electric shock. The another defendant witness Mr. Dilsukhbhai, who is Dy. Engineer has stated that he was not informed about the death of

deceased and therefore, he was not aware about the death of deceased and there was no postmortem report. He has admitted that deceased was customer of GEB. He has not visited the place of deceased. He has stated that they are maintaining the electric poles and there was no fault on the part of the GEB. We have also gone through the record and we find that the learned Judge has framed the issues at Ex. 12 on 30.1.1982.

6A. Learned counsel for the respondent has invited our attention to the judgement of Constitution Bench in case of M.C. Mehta and another Vs. Union of India and others, reported in AIR 1987 SC p.1086 = (1987) 1 Supreme Court Cases 395, wherein, in para 31, the Hon'ble Supreme Court has observed as under :-

" We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher apply or is there any other principle on which the liability can be determined? The rule in Rylands v. Fletcher was evolved in the year 1866 and it provides that a person who for his own purposes being on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he falls to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305...."

... Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms Which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence...

... We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part..... "

6B The aforesaid view has been again reiterated in the judgement of the Supreme Court in case of Indian Council for Enviro-Legal Action etc. Vs. Union of India, reported in AIR 1996 SC 1446, wherein the Hon'ble Supreme Court has observed in para 65 on page 1465 as under :-

"On a consideration of the two lines of thought (one adopted by the English Courts and the other by the Australian High Court), we are of the opinion that any principle evolved in this behalf

should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case (AIR 1987 SC 1086), is by far the more appropriate one apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is obiter)."

#. The learned counsel for the respondent has relied upon recent judgement of the Apex court in case of M.P. ELECTRICITY BOARD VS. SHAIL KUMARI & ORS. reported in 2002 (1) Scale p.119 = (2002) 2 Supreme Court Cases p.162. In para 7 of the Judgement, the Apex Court has observed as under :-

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps."

In para 8, 9, 10, 11, 13 and 14 the Hon'ble Supreme Court has observed as under :-

Paragraph 8:

"Even assuming that all such measures have been

adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

Paragraph 9 :-

" The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1] Blackburn, J., the author of the said rule had observed thus in the said decision : (All ER p. 7E-F)

"[The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."]

Paragraph 10 :-

"There are seven exceptions formulated by means of case-law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this : "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply." (Vide p.535, Winfield on Tort, 15th

Edn.)"

Paragraph 11 :-

"The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather plc. [(1994) 1 ALL ER 53 (HL)]. The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] and a Division Bench in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : 1987 SCC (Cri)482] had followed with approval the principle in Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]. By referring to the above two decisions a two-Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9 : 2001 SCC (Cri) 268"

The court has also referred the case of M.C. Mehta v. Union of India in para 12.

Paragraph 13 :-

"In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant Board...."

Paragraph 14 :-

" The Privy Council has observed in Quebec Rly. Light, Heat and Power Co. Ltd. v. Vandry [(1920) AC 662 : 89 LJPC 99 :123 LT 1] that the Company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high-tension current found its way through the

low-tension cable into the premises of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road."

#. Learned counsel for the respondent has relied on the judgement of the Hon'ble Supreme Court in the case of PARVATI DEVI AND OTHERS VS. COMMISSIONER OF POLICE, DELHI AND OTHERS, reported in 2000 (3) SCC 754 in which at para 2, the Hon'ble Supreme Court has observed as under :-

"The appellants moved the High Court of Delhi claiming compensation as the husband of Appellant 1 died on account of electrocution while walking on the road. That the death was on account of electric shock is established in view of the CFSL report from Calcutta. But as the appellants could not produce relevant materials indicating the negligence of any particular officer of the authority, the High Court refused to award compensation. It is against this order, the present appeal has been filed. Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question."

#. Learned counsel for the respondent has stated that similar view has also been taken by the Delhi High Court in the case of ALKA VS. UNION OF INDIA AND OTHERS reported in 1995 ACJ 1254 and also judgement of the Madras High Court in case of XAVIER VS. STATE OF TAMILNADU AND OTHERS, reported in 1995 ACJ 7 in which at para 5 the court has observed as under:-

"Considering the facts and circumstances of the case on hand, I am fully satisfied that the death of the petitioner's son has occurred due to the negligence on the part of the respondents, in not maintaining the electric poles efficiently and that it has caused the death of the young boy Yesudas."

##. In view of the aforesaid judgements of the Hon'ble Supreme Court, we are of the view that the Electricity

Board, which is a "State", engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the Board / factory and residing in the surrounding areas owes an absolute and nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. When Board had kept live wire near the plaintiff's fencing wire, which also touches the fencing wire of the plaintiff and when plaintiff touched his fencing wire, he died immediately due to electric shock. In view of this facts and circumstances of the case and in view of the ratio laid down by the Apex Court, the Board cannot dispute its liability in its behalf. We have also gone through the reasons given by learned Judge and the learned Judge has rightly held that deceased died due to electric shock because of negligence on the part of the defendant Board. It was the duty of the GEB to maintain its poles. We have also gone through the documentary evidence produced by the plaintiff at Ex. 29, which clearly reveal that deceased died due to electric shock. It is an undisputed fact that in the present case no postmortem is done but there are sufficient evidence on record to prove that the deceased died due to electric shock. Even the evidence of Doctor also supports the case of the plaintiff that the deceased Ibrahim Haji Kasam died due to electric shock. The plaintiffs have also produced the evidence of his brother Gani Haji Kasam at Ex. 37 and evidence of his neighbour Zakar Sakur at Ex. 53 and also evidence of Doctor Bharatkumar Bhailal Shah at Ex. 62 to prove that the deceased died due to electric shock. In view of above, in our view, deceased died due to electric shock and both in law as well as in fact, the plaintiffs have proved that the deceased died due to electric shock and GEB was negligent on this behalf.

##. As regards compensation, we have also considered the recent judgement of the Apex Court on the point of multiplier in case of LATA WADHWA AND OTEHRS VS. STATE OF BIHAR AND OTHERS, reported in (2001) 8 Supreme Court Cases 197, wherein, in para 8 on page 207 and 208, the Hon'ble Apex Court has observed as under :-

11.1 "8. So far as the determination of compensation in death cases is concerned, apart from the three decisions of the Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15.12.1993, this court in the case of G.M. Kerala SRTC V. Susamma Thomas exhaustively dealt with the question. It has been held in the

aforesaid case that for assessment of damages to compensate the dependents, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents and, thereafter, it should be capitalised by multiplying it by a figure representing the proper number of years' purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters", and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed :

"The multiplier method is logically sound and legally well established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."

11.2 The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability in the assessment of compensation. The Court

> disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last....."

##. As regard compensation, we have considered aforesaid judgements of the Supreme Court and the evidence produced by the plaintiffs and oral evidence of brother of the deceased Ibrahim Kaji Kasam that the deceased has an agricultural land and he was earning Rs.7000=00 from the agricultural operation and Rs.3000=00 from the galla and therefore, the deceased was earning Rs.10,000=00. In support of income of the deceased, the plaintiffs have produced the evidence of Gani Haji Kasam at Ex. 37 and evidence regarding crops at Exs. 39 to 43. The deceased have fertile land in which there was oil engine and he might have take three crops in the year. In view of above, the learned Judge has come to the conclusion that deceased was earning Rs.7000=00 from the agricultural operation and Rs.3000=00 from the galla. And looking to the age of deceased as 40 years, the learned Judge has applied multiplier of 13 and came to the conclusion that the deceased was earning Rs.1,30,000=00 yearly and Rs.5000=00 was granted as compensation for the life expectancy of deceased and deduct Rs.3400=00 as pocket expenses and thus learned Judge has awarded Rs.1,32,800=00 as compensation to the respondent.

##. In view of the aforesaid judgement of the Hon'ble Apex Court and in view of the evidences on record, we are of the view that deceased was earning Rs.8000=00 from the agricultural operations and Rs.3000=00 from the galls. Thus, the total income of the deceased was Rs.11,000=00 and out of that we deduct Rs.1000=00 towards his personal expenses, then the deceased was earning Rs.10000=00 and looking to the age of the deceased, multiplier of 13 should be applied, than the amount would come to

Rs.1,30,000=00 and if we add Rs.5000=00 towards life expectancy and deduct Rs.3400=00 towards pocket expenses, than it comes to Rs.1,32,800=00.

##. In view of above facts and circumstances of the case, we are of the view that the learned Judge has rightly held that the plaintiff is entitled to Rs.1,32,800=00 by way of compensation and accordingly, we dismiss the appeal filed by the appellant - defendant GEB. The plaintiffs are entitled to Rs.1,32,800=00 by way of compensation from the defendant. We confirm the judgement delivered by learned Judge dated 2.4.1984 in Special Civil Suit No. 57 of 1980. Decree be drawn accordingly.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)

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